No. 84-1499

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1984

GREENBERRY JOHNSON,

Petitioner,

v.

STATE OF MARYLAND,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF MARYLAND

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18 pp

QUESTION PRESENTED

Whether evidence seized during warrantless search of Petitioner's vehicle should have been excluded.

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Petitioner, Greenberry Johnson, requests that a writ of certiorari issue to review the judgments of the Court of Appeals and the Court of Special Appeals of Maryland entered in these proceedings.

OPINION BELOW

The Order of the Court of Appeals of Maryland denying certiorari in Petitioner's case is included as Appendix A. The unreported opinion of the Court of Special Appeals of Maryland affirming Petitioner's conviction is included as Appendix B.

JURISDICTION

The order of the Court of Appeals of Maryland denying Petitioner's Petition for Writ of Certiorari was filed January 8, 1985. The jurisdiction of this Court is invoked under 28 U.S.C. Section 1257(3).

CONSTITUTIONAL PROVISIONS INVOLVED

United States Constitution, Amendment IV:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

STATEMENT OF THE CASE

Petitioner was shot and wounded by three unknown assailants while in his van. Police were summoned and the Petitioner transported to the hospital. The van was photographed on the scene at 222 East Baltimore Street and then moved to the headquarters building for additional processing and searched. As a result of the search, the Petitioner was charged with the possession of cocaine with intent to distribute. At the hearing on a Motion to Suppress Evidence, the officer in charge, Officer Riley, testified, "I called for them to take the van to Headquarters for inventory." "I opened the right van door at the time to start the inventory because there were items in there strung about. And on the right seat, right on top, was a little blue bag tied and I untied the bag. It was tied around the top. I picked it up to open the bag. When I opened the bag it had U.S. currency in it."

Officer Riley further testified that another officer, Officer Barton, had picked up a bag, "opened it and taking

the bag out" discovered a glassine bag with white capsules with a white substance.

Motion to Suppress Evidence was denied by the trial judge and the Petitioner was ultimately convicted and sentenced to eight (8) years incarceration.

REASONS FOR ALLOWANCE OF THE WRIT

This Court has always acknowledged the importance of the issue underlying this Petition:

The policy underlying the warrant requirement was succinctly stated by Mr. Justice Jackson writing for the Supreme Court in *Johnson v. United States,* 333 U.S. 10 at 13-14. (1948):

> "This point of the Fourth Amendment, which often is not grapsed by zealous officers, is not that it denies law enforcement the support of the ususal inferences which reasonable men draw from evidence. Its protection consists in requiring that those inferences be drawn by a neutral and detached magistrate instead of being judged by officers engaged in the often competitive enterprise of ferreting out crime. Any assumption that evidence sufficient to support a magistrate's disinterested determination to issue a search warrant will justify the officers in making a search without a warrant would reduce the amendment to a nullity and leave the people's homes secure only in the discretion of the police officer . . . When the right of privacy must reasonably yield to the right of search is, as a rule to be decided by a judicial officer, not by a policeman or government enforcement agent."

This Court has previously held that police departments may remove, impound, and inventory vehicles for parking violations, *South Dakota v. Opperman,* 428 U.S. 369 (1976), and traffic violations or accidents where the driver is arrested, *Michigan v. Thomas,* 458 U.S. 259 (1982).

However, in the present case, the vehicle itself was legally parked and constituted no nuisance along a highway of the State. The Petitioner was not disabled as a result of the shooting to the point that he could make no arrangements to have the vehicle removed from the scene nor was he, at the time of the seizure of his vehicle, under arrest. Officer Riley ordered the vehicle towed under the claim that further processing may produce evidence. However, he could not articulate the type of evidence that the vehicle was likely to produce under the circumstances.

In *Coolidge v. New Hampshire,* 403 U.S. 443 (1971), this Court dealt with the seizure of a vehicle because of its potential evidentiary value. There the Court specifically held that the warrant to search defendant's car was illegal. Furthermore, in dismissing the State's argument that the automobile was seized as an "instrumentality of a crime" which was found in plain view the Court stated:

> What the "plain view" cases have in common is that the police officer in each of them had a prior justification for an intrusion in the course of which he came inadvertently across a piece of evidence incriminating the accused. The doctrine serves to supplement the prior justification — whether it be a warrant for another object, hot pursuit, search incident to a lawful arrest, or some other legitimate reasons for being present unconnected with a search directed against the accused — and permits the warrantless seizure. Of course, the *extension of the original justification is legitimate only where it is immediately apparent to the police that they have evidence before them; the "plain view" doctrine may not be used to extend a general exploratory search from one object to another until something incriminating at last emerges.* (Emphasis provided).

Another Supreme Court case, *Cardwell v. Lewis,* 417 U.S. 583, (1974) also focused its holding on the seizure of a vehicle because of its potential evidentiary value. In *Cardwell,* after defendant's arrest upon a warrant fol-

lowing his appearance for questioning at police headquarters concerning a murder which had occurred a few months earlier, the police seized his car from a nearby parking lot and thereafter, inspected the tires and took an exterior paint sample. This Court concluded that "examination of the exterior of the vehicle upon probable cause was reasonable" and did not violate the Fourth Amendment.

In reviewing the facts of the instant case, Officer Riley cannot state why the vehicle had to be taken to police headquarters to be further processed. The area outside the van was canvassed and photographed. There are no facts to support that the vehicle here was an integral part of the crime. Here, there is no articulable showing in the present case as to why Officer Riley reasonably believed Appellant's van to contain evidence or that the van itself constituted evidence.

Assuming arguendo that it was permissible to make a warrantless search of the vehicle based upon a reasonable belief that it contained evidence, or that it was lawful to make a warrantless seizure of the vehicle, which was believed to constitute evidence, then it is argued that the intrusiveness of the police in going into the closed pouch, located near the driver's seat, became the kind of intrusiveness that is repugnant to the Fourth Amendment. In *South Dakota v. Opperman,* 428 U.S. at 396 (1976), the court held that inventory searches of automobiles were permissible: 1. to protect police from danger; 2. to protect police against claims and disputes over lost or stolen property; and 3. to protect the owner's interest while the vehicle remains in police custody. Inventory searches, therefore, are not conducted in order to discover evidence of a crime. In approving the inventory in *South Dakota v. Opperman, supra,* the court pointed out that the "owner — was not present to make other arrangements for the safekeeping of his belongings." That is contrasted in

the instant case with evidence that the owner was present and available.

CONCLUSION

It is respectfully submitted that Petitioner's case involves an issue which merits the attention of this Honorable Court. It has not been previously presented to this Court and does and will continue to effect the everyday procedural operations of police as well as the constitutional rights of every citizen.

Unlike previous cases, the Petitioner's case does not involve the arrest of the vehicle's owner, the vehicle's incapacity or obstruction of traffic, or the seizure of the vehicle as an "instrumentality of a crime." Resolution of the question presented will further the interest of justice by letting police officials know what they are allowed to do, and assisting other courts in developing law in this area. These considerations further enhance the importance of granting a Writ of Certiorari in this case.

Respectfully submitted,

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ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF MARYLAND

APPENDIX A

Denial of Writ of Certiorari to the Court of Special Appeals

Petition Docket No.: 484

September Term, 1984

Filed: January 8, 1985

In The Court of Appeals of Maryland

Petition Docket No. 484

September Term, 1984

(No. 52, September Term, 1984
Court of Special Appeals)

Greenberry R. Johnson

v.

State of Maryland

ORDER

Upon consideration of the petition for a writ of certiorari to the Court of Special Appeals and the answer filed thereto, in the above entitled case, it is

ORDERED, by the Court of Appeals of Maryland, that the petition be, and it is hereby, denied as there has been no showing that review by certiorari is desirable and in the public interest.

/s/ ROBERT C. MURPHY,
Chief Judge.

Date: January 8, 1985

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APPENDIX B

OPINION BELOW:

Johnson v. State, No. 52, Court of Special Appeals of Maryland, September Term, 1984, Filed September 26, 1984 ..... App.

Unreported
In The Court Of Special Appeals
Of Maryland

No. 52

September Term, 1984

Greenberry R. Johnson

v.

State of Maryland

Weant, Alpert, Bloom, Judges.

Per Curiam
Filed: September 26, 1984

This appeal concerns the admissibility of various drugs seized by the police from appellant's van following a shooting. The factual scenario, as it relates to the status of the parties, is a bit unusual in this case. On June 18, 1983, Baltimore City police responded to the scene of a shooting in the 400 block of East Baltimore Street. Appellant Greenberry Johnson had been shot in the chest area and informed the officer that he had been assaulted and robbed by three black males, but was unable to provide the police with a more specific description.

The responding officer, Officer Riley, summoned an ambulance and the crime lab, fearing the incident was a potential homicide. Appellant was taken to University Hospital. Officer Riley testified at the suppression hearing that it is the duty of the first responding officer to preserve the crime scene. He further testified that it is normal police procedure to process the scene, especially if it may develop into a homicide investigation.

The crime lab technician arrived at the scene, photographed the van, and inspected the surrounding area. Officer Riley testified that nothing of significance was discovered at the scene. The police transported the van to headquarters for further inspection because of the poor street lighting. Riley testified that the purpose of the search was to secure evidence of the crime committed against the appellant, the shooting.

During the subsequent search at headquarters, the police discovered a cloth bag containing approximately two thousand dollars and a partially open vinyl pouch containing cocaine. Premised upon this inadvertent discovery, appellant was charged with possession with intent to distribute cocaine.

Appellant's counsel attempted to suppress the drugs and money as the fruits of an improper inventory search. Secondarily, defense counsel argued the absence of probable cause to search the van.

Judge Greenfeld of the Circuit Court for Baltimore City denied the motion to suppress, finding that it is permissible for the police to make a reasonable inspection of the property involved in the commission of a crime. The parties then submitted on an agreed statement of facts and Judge Greenfeld found the appellant guilty.

We affirm Judge Greenfeld's decision to admit the money and drugs and find that the search was conducted pursuant to normal police procedure and was reasonable in scope. Accordingly, there has been no violation of the Fourth Amendment.

Inventory Search

Appellant's appeal is based primarily upon the argument that the search conducted was an improper inventory search. The Supreme Court of the United States

delineated three reasons for permitting inventory searches. Inventory searches are permitted to: 1) protect an owner's property while the property is in police custody; 2) protect the police against claims or disputes as to lost or stolen property; and 3) protect the police from any potential danger. *South Dakota v. Opperman,* 428 U.S. 364, 369 (1974). Such inventory searches derive from the "community caretaking function of the police." *Duncan v. State,* 281 Md. 247, 256 (1977). In the instant case, the search conducted does not fall within the purview of the caretaking function. Although Officer Riley testified that the contents of the vehicle were listed or inventoried, he also testified that the purpose of searching the appellant's van was to locate evidence of the shooting. In *Manalansan v. State,* 45 Md. App. 667, 668 (1980), this Court specifically stated "that the inventorying of the contents of an automobile is not a constitutionally-permitted investigative technique." Here, the police were involved in an official investigation and even though the appellant was not initially the object of the investigation, it was a search for evidence and therefore beyond the perimeter of an inventory search.

Carroll Doctrine

The State premises its primary opposition to the appeal on the theory that the police had probable cause to believe a crime had been committed and therefore properly conducted a warrantless search of a motor vehicle pursuant to the *Carroll* doctrine. *Carroll v. United States,* 267 U.S. 132 (1925). To legitimize a warrantless search of an automobile, the police must have probable cause to believe the vehicle contains evidence of a crime and an exigency, *e.g.,* danger that the evidence may later become unavailable. *Chambers v. Maroney,* 399 U.S. 42, 44 (1970). In this case, the police certainly had probable cause to believe a crime had been committed. The appellant was seated in the van, seriously injured. Furthermore, ap-

pellant specifically informed the responding officer that he had been assaulted and robbed. Thus, there was certainly probable cause to believe evidence of these crimes may be contained within the van. Officers are not required to have "actual knowledge" that the vehicle contains evidence, only the probability that it does. *Mobley v. State,* 270 Md. 76, 81 (1973), *cert. denied,* 415 U.S. 992 (1974).

The exigency prong can also be satisfied in this case. As stated in *Chambers,* "the opportunity to search is fleeting since a car is readily movable." 399 U.S. at 51. Although there was no danger in the appellant moving the vehicle, the testimony indicates that a crowd was gathering around the van and furthermore the attackers were still at large. The exigency is not affected by the acts of the police in transporting the vehicle to the station. It is permissible to seize a vehicle pursuant to the *Carroll* doctrine and conduct the actual search later, at the station. *Mobley v. State,* 270 Md. at 87 (quoting *Coolidge v. New Hampshire,* 403 U.S. 443, 463 (1971)).

Although the facts of the instant case technically satisfy the two prong *Carroll* test, the status of the appellant differs from the more traditional cases. The automobile exception is generally invoked to gather evidence against the driver or an occupant from the outset. For example, in *Carroll* the police were searching for evidence that the occupants were involved in a bootlegging operation. In *Chambers* and *Mobley* the police were pursing robbery suspects. In this case the police began the search in an effort to obtain evidence to use against the appellant's attackers. The money and drugs found and ultimately used against the appellant were inadvertently discovered per normal police procedures. Accordingly, although the two pronged test can be satisfied, this case does not fit exactly within the scope of *Carroll* and its progeny.[1]

[1] The fact that the money and drugs seized were in containers does not alter the above *Carroll* analysis. In United States v.

Reasonableness of Police Conduct

The Fourth Amendment only proscribes *unreasonable* searches and seizures by police. The test of reasonableness is structured by the facts and circumstances of each case. "In each case it requires a balancing of the need for the particular search against the invasion of personal rights that the search entails." *Bell v. Wolfish,* 441 U.S. 520, 559 (1979); *see also Huber v. State,* 2 Md. App. 245, 259 (1967). In *Bell,* the Supreme Court listed various factors to consider, including: "the scope of the particular intrusion, the manner in which it was conducted, the justification for initiating it, and the place in which it was conducted," 441 U.S. at 559. In applying this balancing test, we conclude that the search of a victim's van, following a violent and life-threatening attack, was reasonable.

The police search was conducted with the express purpose of locating clues to identify the victim's attackers. These men were armed. at large, and possibly a threat to the community. This certainly outweighted appellant's privacy interest in his van. The police had a duty to investigate the crime and attempt to capture the perpetrators.[2]

Although there is not a large body of law in this area, this Court addressed an analogous issue in *Floyd v. State,* 24 Md. App. 363 (1975). In that case, Floyd was shot but refused to identify either himself or the shooters. In an

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Ross, 456 U.S. 728 (1982), the Court authorized the search of any part of the vehicle, including containers, which could possibly contain the object of the search. Here, the pouches could have contained fingerprints or could have been dropped by the robbers.

[2] It should be noted that there is no per se exception for a murder scene search. Mincey v. Arizona, 437 U.S. 385 (1978). *Mincey* is distinguishable because the shooting occurred in the defendant's apartment during a drug raid and the search continued for a period of four days.

attempt to secure potential evidence against the assailants, the victim's bloody clothes were seized from the hospital. Through these acts, the police inadvertently discovered twenty-four glassine bags containing heroin. Floyd attempted to suppress the admission of the heroin as an illegal search. This Court ruled that the heroin was admissible because: 1) it constituted evidence of the shooting and 2) the officer had both the right and the duty to ascertain the identity of the victim. 24 Md. App. at 365-66. Once the initial intrusion is deemed lawful, any inadvertent discovery is admissible. *Id.* at 366.

In the case at bar, the police were fulfilling an investigatory duty[3] with no knowledge of the existence of incriminating evidence against Johnson. We hold that the search of the van was lawful as a reasonable police procedure and, therefore, the evidence seized was properly admitted.

JUDGMENT AFFIRMED; APPELLANT TO PAY THE COSTS.

[3] *See also* Moore v. State, 23 Md. App. 540, 552 (1974) (upholding warrantless search of vehicle used in kidnapping and stating officers had the duty to seize it as evidence of the crime).

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QUESTION PRESENTED FOR REVIEW

Whether the motion to suppress evidence was properly denied where police reasonably searched the van for evidence connected with the shooting of Petitioner and inadvertently discovered contraband?

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PETITION FOR WRIT OF CERTIORARI TO THE
COURT OF APPEALS OF MARYLAND

STATEMENT OF THE CASE

Respondent accepts Petitioner's Statement of the Case as set forth at pages 2-3 with the following additions:

Officer Riley, who responded to the scene of

the shooting, testified that he saw Petitioner sitting in the driver's seat of the van with a gunshot wound to the stomach. When Riley asked Petitioner what happened, Petitioner said he had been assaulted and robbed by three black males but could not describe them in any greater detail. After Petitioner was transported to the hospital, Riley summoned the police crime lab unit. Riley stated that because of the serious nature of the crime, it was necessary to transport the van to police headquarters to see if any evidence could be found as to the identity of Petitioner's attackers.

Riley and fellow officer Barton searched the van at the police station. Riley discovered a blue bag on the front seat with $2000. in $20. - bills. Barton found yet a second bag between the passenger's seat and door filled with white capsules and white substance.

REASONS FOR DENYING THE WRIT

THE MOTION TO SUPPRESS EVIDENCE WAS PROPERLY DENIED WHERE POLICE REASONABLY SEARCHED THE VAN AND INADVERTENTLY DISCOVERED CONTRABAND.

Petitioner contends that the motion to suppress evidence was improperly denied for a variety of reasons. His argument wanders between allegations relevant to inventory searches, to those dealing with automobile searches based on probable cause, and finally to the general reasonsableness of searching containers found in vehicles. In contrast, the Court of Special Appeals carefully analyzed this search under three theories, finally concluding tht "the search of a victim's van, following a violent and life-threatning attack, was reasonable" when it "was conducted with the express purpose of locating clues to identify the victim's attackers." Pet. at 8a. That decision is eminently correct and merits no further review by this Court.

Officer Scott Riley testified that on the night

in question, he saw Petitioner sitting in the driver's seat of his van, suffering from a gunshot wound to the stomach. When asked by Riley as to what had happened, Petitioner stated that he was assaulted and robbed by three black males but could not describe them. An ambulance was summoned and Petitioner was taken to the hospital. Riley called for a tow truck and the police crime lab unit. Because of the serious nature of the crime, it was necessary to transport the van to police headquarters to see if any evidence or clues could be found that would enable police to determine the identity of the perpetrators of the assault and robbery on Petitioner. Riley added that because the lighting conditions on the street were poor and those in the police headquarters were not, the search, as a practical matter, would have been done more efficiently at police headquarters.

Once the van was in police headquarters, Riley, along with a crime lab technician and fellow officer Barton, conducted a search of the van for the purpose

of uncovering evidence as to who shot Petitioner. In so doing, Riley discovered a little blue bag on the top of the front seat. He untied it and discovered $2,000. in twenty dollar bills. Barton then opened the left door of the van and saw a brown pouch between the passenger's seat and the door. The pouch was found opened when he entered and Barton saw a glassine bag with white capsules and white substance which he suspected as being narcotics contained therein.

It was obvious that criminal activity was afoot and that the police had probable cause to search the van. They were not looking for narcotics, but for evidence regarding the shooting and robbery of Petitioner. They knew a robbery had occurred; the assailants were armed, and ascertaining their identify was imperative. Because Petitioner could not provide a description of the assailants, the search for clues regarding their identity or motive was critical. The pouches that the police discovered and searched may have well provided information leading to the identity

of Petitioner's attackers. Indeed, they could have belonged to one of the perpetrators. Further, the exigency of the situation dictated that police take immediate action to find any information that might have led them to the robbers.

Ordinarily a motor vehicle and it contents may be searched without a warrant where police have probable cause to believe the vehicle contains evidence of a crime. United States v. Ross, 456 U.S. 798 (1982). In defining "probable cause," this Court stated in Illinois v. Gates, 462 U.S. 213 (1983), that "it is clear that 'only the probability, and not a prima facie showing of criminal activity is the standard of probable cause'." (quoting Spinelli v. United States, 393 U.S. 410, 419 (1969) (citations omitted).[1] This Court added that "probable cause is a fluid concept -

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[1] In Gates, this Court considered the application of the Fourth Amendment to a Magistrate's issuance of a search warrant on the basis of a partially corroborated anonymous informant's tip. While this is a distinction from the present case, the Court's discussion of "probable cause" is relevant and appropriate.

turning on the assessment of probabilities in particular factual contexts - not readily or even usefully, reduced to a neat set of legal rules." Gates, 462 U.S. at 233. In Chambers v. Maroney, 399 U.S. 42 (1970), this Court held that where a police officer had probable cause to conduct a warrantless search of a vehicle under Carroll v. United States, 267 U.S. 132 (1925), he may remove the vehicle to the police station before making the search. That doctrine was applied to packages found in a car in United States v. Johns, 469 U.S. __, 105 S.Ct. 881, 83 L.Ed.2d 890 (1985).

Under that rationale, if there was probable cause to believe that the van contained evidence of crime, it was entirely reasonable for the police to search it and the containers at the scene or at headquarters. The Maryland Court of Special Appeals questioned, however, the applicability of the Carroll doctrine when the probable cause does not relate to the driver or an occupant of the vehicle, and it went onto examine the general reasonableness of the search.

The Maryland court relied on the articulation of reasonableness in Bell v. Wolfish, 441 U.S. 520, 559 (1979), and distinguished Mincey v. Arizona, 437 U.S. 385 (1978), because there the four day search was of an apartment. That analysis is sound and, unlike Thompson v. Louisiana, 469 U.S. __, 105 S.Ct. 409, 83 L.Ed.2d 246 (1984), does not improperly validate any "murder scene exception." Here, the place searched was a van parked on a public highway, not someone's home. The diminshed expectation of privacy in a vehicle, recently reaffirmed in California v. Carney, __ U.S. __, No. 83-859, 53 U.S.L.W. 4521, filed May 13, 1985, coupled with the obvious immediate police need to search for clues to the identity of the robbers, justified the prompt transfer of the van to headquarters where a proper search could be made.

The discovery and seizure of contraband and evidence of drug transactions in plain view during the reasonable emergency search was also proper, Mincey, 437 U.S. at 393. Even where police are legitimately

searching for evidence directed at someone other than the defendant, any evidence found may be seized. Frazier v. Cupp, 394 U.S. 731 (1969) (in lawfully searching duffle bag belonging to petitioner's cousin, police's finding and seizing evidence against petitioner clearly permitted); Ker v. California, 374 U.S. 23 (1963) (observation and subsequent seizure of marijuana in defendant's kitchen by police was valid where probable cause existed to arrest).

Furthermore, even though the Maryland court found in Petitioner's favor on the inventory rationale, the complaints he makes here are insubstantial. While the van was parked legally, Petitioner was known in the neighborhood and friends or relatives may have attempted to remove the van or its contents had police not done so. Petitioner was in no condition to drive the van away himself. The removal and search of the van was done in good faith and not as a mere subterfuge. The police took custody of Petitioner's van because it might well have been a public hazard

had it been left on the street. A crowd had gathered and the van had just been the scene of a shooting. Police were following standard procedure when such a serious crime occurs and a car is involved. The reasonableness of the impoundment and inventory "does not necessarily or invariably turn on the existence of alternative 'less intrusive' means." Illinois v. Lafayette, 462 U.S. 640, 647 (1983). Here, the routine procedure of examining a car which is the scene of a serious crime was proper.

CONCLUSION

For the foregoing reasons, Respondent respectfully requests that the Court deny the Petition for Writ of Certiorari.

Respectfully submitted,

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